IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA SPECIAL BENCH (Court-I)
KOLKATA

IA(I.B.C)/1988(KB)2024
in
C.P. (IB)/285(KB)2024

An Application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

In the matter of:

UCO Bank

…FINANCIAL CREDITOR

Versus

Rahul Gupta

…RESPONDENT/PERSONAL GUARANTOR

Date of pronouncement: 08/01/2025

CORAM:

Smt. Bidisha Banerjee, Member (Judicial)

Shri D. Arvind, Member (Technical)

Appearance (via video conferencing/physically)

For the Financial Creditor
Ms. Pallavi Ray, Adv.
Mr. Rahul Sharma, Adv.

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court Convened in a hybrid mode.

2. This C.P. (IB)/ 285 (KB)2024 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor to Corporate Debtor Rule, 2019 ("Personal Guarantors Rules") and Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations') in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable

Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.

3. In terms of Section 99 of the IBC, report was called for from the RP appointed in the matter, namely, **Mr. Sudipta Ghosh**, the RP has forwarded the following report prayer in terms of Section 99(7) of IBC, which is extracted hereunder for clarity: -

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA

Report under Section 99 of IBC

Sl. No.	Particulars	
1.	Particulars of Applicant/ Financial Creditor	UCO Bank Address: Asset Management Branch, 70A, Block- D, New Alipore, Kolkata- 700 053 Email- arbkol@ucobank.co.in
2.	Particulars of Corporate Debtor under CIRP	Not Applicable as there is no Corporate Debtor. It is the matter of Insolvency Resolution Process based on a petition filed by UCO Bank in the matter of Mr. Rahul Gupta, Personal Guarantor of M/s Haridra Vintrade Private Limited. Name of the Personal Guarantor: Mr. Rahul Gupta. Address: 28/V/1A, Ramkrishna Samadhi Road, Kakurgachi, Kolkata-700 054 Email : haridravintrade@gmail.com
3.	Date of Commencement of CIRP of Corporate Debtor	Not Applicable as it is an Insolvency Resolution Process and not Corporate Insolvency Resolution Process. In this matter the Order based on which this Report is being prepared has been passed on August 30, 2024.

SUDIPTA GHOSH
Insolvency Professional
Regn. No.-IBBI/IPA-001/IP-P00464/2017-18/10872

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4.	Details of personal guarantee given to Applicant by Personal Guarantor	The details of the Personal Guarantee is provided in Paragraph 6 to 11 of the instant Report.
5.	Date of invocation of personal guarantee by Financial Creditor	Letter of invocation of personal guarantee was served by the Financial Creditor on May 13, 2024 and it was again served on June 04, 2024.
6.	Date of filing Petition under Section 94/95 of IBC	August 14, 2024.
7.	Amount in default by Corporate Debtor to the Applicant at the time of commencement of CIRP	Not Applicable as it is an Insolvency Resolution Process and not Corporate Insolvency Resolution Process. In this matter the amount of default as mentioned in the copy of petition is Rs. 3,03,41,036.57/- (Rupees Three Crores Three Lakhs Forty One Thousand Thirty Six and Fifty Seven Paisa only) as on June 20, 2024.
8.	Amount provided in the resolution plan, if any, against the claim of the applicant	Not Applicable as it is an Insolvency Resolution Process and not Corporate Insolvency Resolution Process. No details of payment received has been provided in the petition submitted by the UCO Bank.
9.	Balance due from personal guarantor	Amount of default as mentioned in the copy of petition is Rs 3,03,41,036.57/- as on June 20, 2024.
10.	Net worth of personal guarantor as on date of the report	Not Available.
11.	Copies of past 5 years balance sheet and income tax return of personal guarantor	Not Available.

NOTARY GOVT. OF INDIA KOLKATA

12.	Details of actions taken by Applicant or any other Financial Creditor against Personal Guarantor under any other Act in respect of debt owed by Corporate Debtor	Financial Creditor issued Recall Notice to the Company on March 31, 2023. The Financial Creditor has also filed Application before the Hon'ble Debts Recovery Tribunal - 3, Kolkata [Case No. OA/373/2023]. The said proceeding is still pending.
13.	Recommendations (Admit/Reject)	Based on the instant situation, the Resolution Professional recommends admission of the Insolvency Resolution Process in the matter of the Personal Guarantor, Mr. Rahul Gupta.

4. M/s Haridra Vintrade Private Limited, the borrower company had approached UCO Bank seeking grant of various credit facilities which was duly appraised and sanctioned by UCO Bank.

5. UCO Bank, extended credit facilities to M/s Haridra Vintrade Private Limited by Sanction Letter dated July 15, 2022. M/s Haridra Vintrade Private Limited was obligated to repay the principal sum of Loan amount along with interest thereon in accordance with repayment schedule.

6. The Deed of Guarantee was executed on July 28, 2022, by Mr. Rahul Gupta.

7. Thereafter, M/s Haridra Vintrade Private Limited and Mr. Rahul Gupta failed / neglected to make payment to UCO Bank as per terms of the Advance. Consequently, UCO Bank classified the Account of M/s Haridra Vintrade Private Limited as a Non-Performing Asset.

8. UCO Bank has also submitted application before the Hon'ble Debts Recovery Tribunal - 3, Kolkata [Case No. OA/373/2023]. The said proceeding is still pending.

NOTARY
KOLKATA
SHYAM NARAYAN PANDEY
REGN. NO. 13324/2019
GOVT. OF INDIA

9. UCO Bank invoked Personal Guarantee as executed by Mr. Rahul Gupta by Letter of invocation of Guarantee dated May 13, 2024 and June 04, 2024. However, Bank failed to realize its dues.

10. UCO Bank issued Notice of Demand to Mr. Rahul Gupta, as per IB Rules, 2019 on June 20, 2024. However, Bank failed to realize its dues.

11. Deed of Guarantee was executed by Mr. Rahul Gupta on the aforesaid credit facilities availed by M/s Haridra Vintrade Private Limited on July 28, 2022, in favour of UCO Bank to secure the repayment of the principal amount together with all interest, additional interest, Liquidated damages, premium on repayment, reimbursement of all Costs, Charges and expenses and other obligations payable by M/s Haridra Vintrade Private Limited in the event of failure on the part of repayment of the dues by the primary borrower.

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Insolvency Professional

12. UCO Bank on June 20, 2024 issued a Demand Notice in Form B' according to Rule 7(1) of the IB Rules, 2019. However, no payment has been received by Bank in response to the aforesaid Demand Notice.

13. The Applicant Bank has also serviced to the Personal guarantor detailed statement of dues on various accounts along with break ups into several components into principal, interest, compound interest, etc. The Applicant bank has also furnished copies of certificates under Bankers' Books Evidences Act, 1891.

14. The Applicant Bank in its Application as aforesaid, states with adequate evidence that Mr. Rahul Gupta has committed default in making payment of the credit facilities along with interest, for which he executed the personal guarantee to Bank on behalf of M/s Haridra Vintrade Private Limited.

15. Subsequent to issue of Recall Notice, Invocation of Guarantees, no response was received from the Personal Guarantor.

16. The Hon'ble NCLT Kolkata Bench was pleased to Confirm interim moratorium under section 96(1)(a) of IBC,2016 in relation to all the debts of Mr. Rahul Gupta from the date of the said Application filed by Indian Bank .

17. The Hon'ble NCLT, Kolkata Bench appointed the undersigned as Resolution Professional, and directed to file Report under section 99 of IBC, 2016.

18. The undersigned issued letter to Mr. Rahul Gupta on September 05, 2024 and requested to provide information / evidences in support of repayment of loan of Bank or relinquishment of Mr. Rahul Gupta from his liability to pay the dues of the said Bank. Despite knowing the timelines of this matter Mr. Rahul Gupta has chosen not to reply to the said letter send vide mail dated September 05, 2024 within given time of 06.00 P.M. on September 08, 2024.

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REASONS FOR RECOMMENDATION

The undersigned recommends for acceptance of the application filed by UCO Bank under Section 95(1) of IBC, 2016 for the following reasons:-

1. In accordance with the provisions laid down under Section 95(4) of IBC, 2016 , the said Application was filed accompanied with details along with documents relating to-

a) The debts owed by M/s Haridra Vintrade Private Limited guaranteed by Mr. Rahul Gupta to Bank,

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b) Mr. Rahul Gupta has failed to pay the said Debts within fourteen days of the service of the Notice of Demand by Bank and,

c) Relevant evidence of the said default and non-payment of the debts as aforesaid.

2. In accordance with the provisions laid down under Section 95(5) of IBC, 2016, Bank has provided a Copy of the Application as aforesaid to Mr. Rahul Gupta.

3. Bank has served Demand Notice in 'Form B' under Section 95(4)(b) of IBC , 2016 read with Rule 7(1) of IB Rules,2019, to Mr. Rahul Gupta, demanding payment of the amount of default.

NOTARY GOVT. OF INDIA KOLKATA

4. Bank has served a copy of the application referred to in Rule 7(2) of IB Rules, 2019 to Mr. Rahul Gupta and M/s Haridra Vintrade Private Limited, in accordance with Rule 7(3) of IB Rules, 2019.

5. In accordance with the provision laid down under section 99(2) of IBC 2016, the undersigned has requested Mr. Rahul Gupta to prove repayment of debt of Bank. However, Mr. Rahul Gupta could not produce any information/ documents/ evidence in support of either repayment of the said loan or extinguishment of the said liability.

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28

6. In accordance with the provisions laid down under Section 99(6) of IBC,2016, the undersigned has examined the application filed by Bank and ascertained that the said application satisfies the requirements set out in Section 95 of IBC,2016.

7. In terms of provisions under Section 99(8), the undersigned submits that the debtor is not eligible for a fresh start under Chapter II owing to overall level of debt due to be recovered being on higher side.

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Insolvency Professional
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IP-P00484/2017-18/10872

28

6. In accordance with the provisions laid down under Section 99(6) of IBC,2016, the undersigned has examined the application filed by Bank and ascertained that the said application satisfies the requirements set out in Section 95 of IBC,2016.

7. In terms of provisions under Section 99(8), the undersigned submits that the debtor is not eligible for a fresh start under Chapter II owing to overall level of debt due to be recovered being on higher side.

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IP-P00484/2017-18/10872

4. A bare perusal of the report extracted above indicates that no Corporate Insolvency Resolution Process or CIRP has been initiated against the principal borrower M/s HARIDRA VINTRADE PRIVATE LIMITED.

5. At hearing it was argued that in absence of any CIR proceeding initiated against the principal borrower the present petition under Section 95(1) seeking to initiate insolvency proceedings against the Personal Guarantor of the Principal Borrower is not maintainable before this Adjudicating Authority i.e., NCLT. It would eventually lie before the jurisdictional the Debt Recovery Tribunal (DRT.

6. Thus, the issues that have cropped up for determination in the present matter are two folds are:

(i) ***Whether proceedings against Personal Guarantor under Section 95 of the Code is maintainable even when no CIRP proceedings have been initiated against the Corporate Debtor/ Principal Borrower***.

(ii) ***Whether the present application under Section 95(1) of the Code against the Personal Guarantor would be maintainable before this forum, or should the creditor approach the Learned Debt Recovery Tribunal (DRT) for its relief.***

7. To determine the same, we would refer to a few statutory provisions in this context as under:

A. Liability of the Personal Guarantors is co-extensive with the Principal Debtor:

Section 128 of the Indian Contract Act, 1872, stipulates that the liability of the surety or guarantor is co-extensive with the principal debtor unless it is otherwise provided by the contract.

There is no quarrel over the proposition and the celebrated decisions of ***Lalit Kumar Jain* v. *Union of India*** reported in **(2021) 9 SCC 321** and ***Dilip B Jiwrajka vs Union of India & Ors.*** in **Writ Petition (Civil) No. 1281 of 2021** also propound the same.

B. Adjudicating Authority for Personal Guarantors:

Section 179 of the I&B Code, 2016, expressly stipulates what would be the Adjudicating Authority for **individuals** and partnership firms. It lays down the following:

> ***179.*** *(1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of **individuals** and firms shall be the **Debt Recovery Tribunal** having territorial jurisdiction over the place where the **individual debtor** actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person.*
>
> *(2) The **Debt Recovery Tribunal** shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of—*
>
> *any suit or proceeding by or against the **individual debtor;***
>
> *(b) any claim made by or against the individual **debtor**;*
>
> *(c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the **individual debtor** or firm under this Code.*
>
> *(3) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.*

Thus, essentially the Adjudicating Authority for "individuals" and "individual debtor" and partnership firms would be the jurisdictional DRT.

C. Insolvency Resolution process against a Personal Guarantor:

(i) Section 94 of chapter III of Part IV of the Code applies to Insolvency Resolution Process against a **debtor** who commits a default. The opening words of Section 94 are as under:

> ***94.*** *(1) A **debtor** who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.*

It proceeds further,

> (2) *Where the **debtor** is a partner of a firm, such debtor shall not apply under this Chapter to the Adjudicating Authority in respect of the firm unless all or a majority of the partners of the firm file the application jointly.*
>
> *(3) An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts.*
>
> *(4) A **debtor** shall not be entitled to make an application under sub-section (1) if he is—*
>
> *(a) an undischarged bankrupt;*
> *(b) undergoing a fresh start process;*
> *(c) undergoing an insolvency resolution process; or*
> *(d) undergoing a bankruptcy process.*
>
> *(5) A **debtor** shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the **debtor** during the period of twelve months preceding the date of submission of the application under this section.*
>
> *(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied with such fee as may be prescribed.*

Thus, an individual debtor and partnership firms (through all of its partners) can apply under Section 94 of the Code for initiating a resolution process against itself.

Section 95(1) of the Code similarly stipulates the following:

Application by creditor to initiate insolvency resolution process.

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—

(a) any one or more partners of the firm; or

(b) the firm.

3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to—

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.

Thus, the insolvency proceedings against a debtor partnership firm or its partners will also lie before the NCLT.

It is evident that Section 94 or 95 of the Code do not specifically mention about "Personal Guarantor", **but the reference is to the word 'Debtor', as the Code when introduced in 2016 did not contemplate that the cases of personal guarantors to the corporate debtor would be made amendable to the jurisdiction of NCLT**. By way of **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019**, which was brought into effect from 1st December 2019, Personal Guarantors in respect of Principal Borrower or a corporate debtor was brought within the ambit of IBC for the first time. Thus, the said provisions for "debtor" have been made applicable to the personal guarantors of the corporate debtors.

Under the said regulations a "**corporate debtor**" means a corporate person for whom the guarantor has given a personal guarantee and the Resolution Process means the Insolvency Resolution Process of a "**guarantor**".

The Resolution Process commencement date means the date of admission of an application under Section 100 of the Code.

Resolution Process applies to the application preferred under Sections 94 or 95 which is again in relation to a **"debtor"** who commits a default. Thus, Personal Guarantor to a Corporate Debtor is also a "Debtor".

Thus, both **Section 179** of the Code as well as **Sections 94** and **95** use the word **"Debtor"** (and not Personal Guarantor) and under Regulations of 2019 a Personal Guarantor to a Corporate Debtor is a **"Debtor"** himself. Under Section 179 of the Code, the said "Debtor" has to approach the DRT and under Section 94 and 95 of the Code, the said

"Debtor" also has right to approach the NCLT under the given circumstances as spelt out in Section 60 and Section 179 of the Code.

(iii) Under Section 105 of the Code: -

*A "**debtor**" shall prepare in consultation with the Resolution Professional a repayment containing a proposal to the creditors for restructuring of his debts or affairs.*

(iv) **Under Section 115 of the Code:**

Where the Adjudicating Authority rejects the repayment plan under Section 114 the **"debtor"** or the creditors shall be entitled to file an application for bankruptcy under Chapter IV of the code.

(v) Chapter I of Part III of the Code deals with Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms where amount of default is not less than one thousand (which may extend to 1 Lakh if notified).

The Adjudicating Authority in terms of the provision therein is the **DRT** and a **"debtor"** can be an **"individual"** or a partner of a partnership firm.

(vi) Chapter IV of Part III of the Code:

The Chapter relates to bankruptcy orders in the case of **"individuals and partnership firms"** and is not necessarily a fall out of a failed repayment plan.

Bankruptcy can be sought for if a plan under Section 94 or 95 is rejected under Section 100(4) on the basis of report submitted by the Resolution Professional, if the application was filed with an intention to defraud the creditors, or under Section 115(2) upon rejection of the repayment plan or an early termination of the repayment plan.

Thus, there is apparently no distinction between a **"debtor",** an **"individual debtor"** or an **"individual"** or a **"personal guarantor"** under Sections 94 to 120 of Chapter III of the Code. As such Bankruptcy Orders can be passed by the NCLT itself against the Personal Guarantor or

"debtor" in accordance with Chapter IV, consequent an application under Section 94 and Section 95 of the IBC against to a personal guarantor too.

(vii) Further, we would refer to **Section 5(22) of the Code** which enunciates that *"**personal guarantor**" means an **<u>individual</u>** who is the surety in a contract of guarantee to a corporate debtor.*

(viii) Section 179 of the Code specifies as under:

Subject to the provisions of Section 60 the Adjudicating Authority in relation to Insolvency matters of "individuals" and "firms" shall be the DRT having territorial jurisdiction.

There is no reason to believe that the word "individuals" under Section 179 of the Code cannot apply to "individuals" under Section 5(22) of the Code or to "Debtors" or "Personal Guarantors" under Section 94 and 95 of the Code. Thus, there is apparently no reason to believe that the word "individuals" under Section 179 of the Code is different from the word "individuals" in Sections 5(22) and 115 of the Code or the word "debtor" or "individuals" in Section 179 of the Code is distinct from the word "individuals" (which applies to Personal Guarantor) under Section 115 of the Code. Thus, "individuals" under Section 179 of the Code can also mean "Personal Guarantors" as well as "individual debtors".

Thus, apparently there is no reason why Section 179 of the Code will not apply to the Personal Guarantors.

Sections 60 (1) of the Code stipulates that:

The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors <u>and personal guarantors</u> thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate persons located.

In terms of Section 60(1) of the Code, the Adjudicating Authority (NCLT) in relation to **"Insolvency Resolution"** (and not recovery) and "Liquidation" for "Corporate Debtors" and "Personal Guarantors" shall be

NCLT having territorial jurisdiction or the place where the registered office of the corporate person is located.

Thus, the Adjudicating Authority <u>for insolvency resolution</u> of the corporate persons including corporate debtors and personal guarantors thereof (of such corporate debtors) shall be NCLT having territorial jurisdiction or the place where the registered office of the corporate person is located.

(x) **Section 60(2) of the Code** enumerates that *where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor* ***<u>is pending</u>*** *before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.*

Thus, it applies to a pending proceeding before NCLT and nothing else.

(xi) **Section 60 (4) of the Code says that:**

The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

Thus, in terms of Section 60 (4) of the Code, the National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2) of Section 60 of the Code.

(xii) Therefore, in terms of **Section 60(2) of the Code,** if jurisdiction for Personal Guarantor even without a CIRP against Principal Borrower is vested in the NCLT, then why would Sub-Section 4 of Section 60 be introduced.

8. In ***Lalit Kumar Jain v. Union of India,*** reported in **(2021) 9 SCC 321,** the Hon'ble Apex Court observed that:

"***123.*** *This legal position was noticed and approved later in Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. & Wvg. Mills Ltd. [Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. & Wvg. Mills Ltd., (2002) 5 SCC 54] An earlier decision of three Judges in Punjab National Bank v. State of U.P. [Punjab National Bank v. State of U.P., (2002) 5 SCC 80]* ***pertains to the issues regarding a guarantor and the principal debtor****. The Court observed as follows : (Punjab National Bank case [Punjab National Bank v. State of U.P., (2002) 5 SCC 80] , SCC p. 80-81, paras 1-6)*

"1. The appellant had, after Respondent 4's management was taken over by U.P. State Textile Corporation Ltd. (Respondent 3) under the Industries (Development and Regulation) Act, advanced some money to the said Respondent 4. In respect of the advance so made, Respondents 1, 2 and 3 executed deeds of guarantee undertaking to pay the amount due to the Bank as guarantors in the event of the principal borrower being unable to pay the same.

2. Subsequently, Respondent 3 which had taken over the management of Respondent 4 became sick and proceedings were initiated under the Sick Textile Undertakings (Nationalisation) Act, 1974 (for short "the Act"). The appellant filed suit for recovery against the guarantors and the principal debtor of the amount claimed by it.

3. The following preliminary issue was, on the pleadings of the parties, framed:

'Whether the claim of the plaintiff is not maintainable in view of the provisions of Act 57 of 1974 as alleged in Para 25 of the written statement of Defendant 2?'

4. The trial court as well as the High Court, both came to the conclusion that in view of the provisions of Section 29 of the Act, the suit of the appellant was not maintainable.

5. We have gone through the provisions of the said Act and in our opinion the decision of the courts below is not correct. Section 5 of the said Act provides for the owner to be liable for certain prior liabilities and Section 29 states that the said Act will have an overriding effect over all other enactments. ***This Act only deals with the liabilities of a company which is nationalised and there is no provision therein which in any way affects the liability of a guarantor*** *who is bound by the deed of guarantee executed by it. The High Court has referred to a decision of this Court in Maharashtra SEB v. Official Liquidator [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358] where the liability of the guarantor* *in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law, was considered.* ***It was held in this case that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act.***

6. In our opinion, the principle of the aforesaid decision of this Court is equally applicable in the present case. The right of the appellant to recover money from Respondents 1, 2 and 3 who stood guarantors arises out of the terms of the deeds of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not have been able to recover money from the principal borrower. It may here be added that even as a result of the Nationalisation Act the liability of the principal borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act."

124. *In Kaupthing Singer & Friedlander Ltd. [Kaupthing Singer & Friedlander Ltd. (No. 2), In re, (2012) 1 AC 804 : (2011) 3 WLR 939 : (2012) 1 All ER 883, paras 11, 12, 53-54] the UK Supreme Court reviewed a large number of previous authorities on the concept of double proof i.e. recovery from guarantors in the context of insolvency proceedings. The Court held that : (AC p. 814, para 11)*

"11. The function of the rule is not to prevent a double proof of the same debt against two separate estates (that is what insolvency practitioners call "double dip"). The rule prevents a double proof of what is in substance the same debt being made against the same estate, leading to the payment of a double dividend out of one estate. It is for that reason sometimes called the rule against double dividend. In the simplest case of suretyship (where the surety has neither given nor been provided with security, and has an unlimited liability) there is a triangle of rights and liabilities between the principal debtor ("PD"), the surety ("S") and the creditor ("C"). PD has the primary obligation to C and a secondary obligation to indemnify S if and so far as S discharges PD's liability, but if PD is insolvent S may not enforce that right in competition with C. S has an obligation to C to answer for PD's liability, and the secondary right of obtaining an indemnity from PD. C can (after due notice) proceed against either or both of PD and S. If both PD and S are in insolvent liquidation, C can prove against each for 100p in the pound but may not recover more than 100p in the pound in all."

125. *In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.*

126. *For the foregoing reasons, it is held that the impugned notification is legal and valid. It is also held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors). The writ petitions, transferred cases and transfer petitions are accordingly dismissed in the above terms, without order on costs.***"**

(Emphasis Added)

Thus, irrespective of approval of a resolution plan relating to a Principal Borrower or Corporate Debtor, a Personal Guarantor still remains liable to repay

9. Our experience is that in an application under Section 94 or 95 of the Code, a "Personal Guarantor" is let off even with a repayment plan which proposes as repayment of 0.001% of the debt owed. Much of the exercise is futile.

10. Most of the time when petitions under Section 95(1) of the Code are moved before us against a Personal Guarantor to a Principal Borrower where no CIRP is either initiated or pending before the NCLT against the said Principal Borrower, the creditors choose to submit that NCLT is the proper forum where Insolvency Resolution Process of Personal Guarantor would lie even without a CIRP ever initiated against Principal Borrower. Reference to that would be made to the following decisions:

(a) In ***Mahendra Kumar Agarwal vs. PTC Financial Services Ltd*** [Company Appeal (AT)(Ins) No. 8 of 2023] reported in **MANU/NL/0682/2023,** and

(b) In ***State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia*** **[Company Appeal (AT)(Ins) No. 60 of 2022],**

11. In ***Mahendra Kumar Agarwal*** **(Supra),** the Hon'ble NCLAT Chennai held as under:

> "*76. It is well settled by now, that the `Insolvency Proceedings', can be initiated against the `Personal Guarantor', even when `no proceedings', **are pending** against the `Corporate Debtor'.*
>
> *79. Be that as it may, in view of the detailed foregoing qualitative discussions, this `Tribunal', keeping in mind the respective contentions advanced on either side, and considering the facts and circumstances of the instant case, in a conspectus manner, comes to a resultant conclusion that the `Adjudicating Authority' / `Tribunal', has `jurisdiction', to `entertain'/`initiate', the `Insolvency Proceedings' of the `Personal Guarantors', even when `no Corporate Insolvency Resolution Process' proceedings, is **`pending',** against the `Corporate Debtor', and in any event, the `Corporate Insolvency Resolution Process' proceedings, is pending, and continued to be pending, against the `Corporate Debtor'**.** Viewed in that perspective, the `impugned order', dated 21.07.2022, in CP (IB) No. 335 / 95 / HDB / 2020, passed by the `Adjudicating Authority' (`National Company Law Tribunal', Bench – I, Hyderabad), is free from any `Legal Flaws'. Resultantly, the instant `Appeal' fails.*"
>
> **(Emphasis Added)**

12. The stress is on the word "pending" because the order does not specify any proceeding being "initiated" and concluded against the Principal Borrower prior in point of time.

13. Similarly, in ***Mahendra Kumar Jajodia*** **(Supra)** the Hon'ble NCLAT, Principal Bench, New Delhi, held that:

> "*11. The Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor* ***are pending*** *the application under Section 95(1) filed by the Appellant is not maintainable. The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor* ***are pending*** *before the NCLT. In result, we set aside the order dated 05th October, 2021 passed by the Adjudicating Authority. The Application filed by the Appellant under Section 95(1) of the Code is revived before the NCLT which may be proceeded in accordance with the law.*"
>
> **(Emphasis Added)**

14. Thus, in both the said decisions i.e., ***Mahendra Kumar Agarwal*** **(Supra)** and ***Mahendra Kumar Jajodia*** **(Supra),** we would note that Hon'ble NCLATs have held that even where no CIRP or Liquidation Proceeding is **"Pending"** against the Principal Borrower, the Insolvency Resolution Process of a Personal Guarantor would lie before the NCLT. We would note that ***Mahendra Kumar Agarwal*** **(Supra)** and ***Mahendra Kumar Jajodia*** **(Supra),** were not such cases where no CIRP was even filed against the Principal Borrower rather the CIRP against the Principal Borrower had been preferred in prior point of time that had culminated into a Resolution Plan and so no CIRP was "pending" when the Section 95 application was moved. Hence, in our considered opinion, the decisions are not an authority on the proposition whether even without a CIRP initiated against the principal borrower an application under Section 95(1) would be maintainable.

15. On contrary, we would note that, the Hon'ble Division Bench of Madras High Court in the case of ***Rohit Nath v. KEB Hana Bank Ltd.*** in C.R.P. (P.D.) No. 1289 of 2021, reported in **MANU/TN/5212/2021**, (hereinafter referred to as **"*Rohit Nath I*"**), clearly propounds at para 22 of the judgment that if a CIRP is initiated under the Code pertaining to the principal borrower, the insolvency resolution process pertaining to the guarantor would per force be before the same adjudicating authority, viz the NCLT. The Hon'ble Division Bench presided over by the Hon'ble Chief Justice has without any ambiguity or ambivalence held that, where there is no CIRP initiated in respect of the principal borrower, insolvency proceedings pertaining to the guarantor must necessarily be carried only to the jurisdictional Debt Recovery Tribunal and not to any other forum. The relevant extract is reproduced verbatim hereinbelow with supplied emphasis for clarity:

> *"22. The text of Section 60(2) discloses that Section 60 of the Code would apply to an individual* ***only if*** *there is a corporate insolvency resolution process pertaining to the corporate entity which is the principal debtor, that* ***has been filed*** *or* ***commenced****. In other words, in case of company 'A' being the* ***principal debtor*** *and* ***an individual 'P'*** *the* ***guarantor*** *promising repayment of the credit facilities obtained by 'A',* ***if a corporate insolvency resolution process is initiated under the provisions of the Code pertaining to company 'A', the insolvency resolution process pertaining to guarantor 'P' would per force be before the same adjudicating authority****, viz., the National Company Law Tribunal.* ***But, where there is no corporate insolvency resolution process initiated in respect of company 'A', insolvency proceedings pertaining to guarantor 'P' must necessarily be carried only to the jurisdictional Debts Recovery Tribunal*** *and* ***not to any other forum.*** *To repeat, the provisions of the Acts of 1909*

> *and 1920 will have no manner of application to guarantors who have furnished guarantees in connection with credit facilities obtained by corporate entities."*
>
> (Emphasis added)

16. In this judgment, the stress is on the word **"initiated",** as the Hon'ble Division Bench has clearly made an observation that in case, no corporate insolvency resolution process **initiated** in respect of the Principal Borrower, insolvency proceedings pertaining to guarantor **must necessarily be carried** only to the **jurisdictional Debt Recovery Tribunal** and **not to any other forum**.

17. Subsequently, in another case, being ***Rohit Nath @ Rohit Rabindra Nath v. KEB Hana Bank Ltd.,*** in C.R.P.No.2513 of 2022 and C.M.P.No.12925 of 2022, the Hon'ble Madras High Court in its judgment dated 30.03.2023, (hereinafter referred to as "***Rohit Nath II***"), considered whether the bankruptcy proceedings, pending on the file of the Debt Recovery Tribunal against the petitioner / personal guarantor has to be transferred to the file of the National Company Law Tribunal in view of the subsequent institution and pendency of an insolvency resolution process of the corporate debtor. The Hon'ble Chief Justice's division bench observed that:

> *"6.6. It can further be seen that even the moratorium, which comes into force as per Section 14 of The IBC in respect of institution of suits, continuation of proceedings etc., is not applicable in respect of the guarantor as per Section 14(3)(b) of The IBC. Thus, we are of the view that the proceedings which are now pending before the DRT, termed as 'bankruptcy proceedings' altogether lies in a different compartment and no purpose whatsoever would be made by transferring the same to the NCLT.* ***The purpose of transferring is to consider the resolution plan and the repayment plan together, so that, the management of the corporate entity be vested with the Directors,***

(who are more often not the personal guarantors) even while the debts are being discharged. Therefore, on more clear understanding of Section 60(3) of The IBC, the phrase 'as the case may be' would only relate to appropriate proceedings. If different proceedings are pending at different stages, the same need not be transferred inappropriately as the same would be in violence to the phrase 'as the case may be' found under Section 60(3) of The IBC."

(Emphasis Added)

18. We have already noted that ***Mahendra Kumar Jajodia*** **(Supra),** is one of such case, where the CIRP against Principal Borrower stood initiated at a prior point of time before the NCLT and had culminated into a Resolution Plan, therefore, it was not once such case where even without a CIRP being initiated against the Principal Borrower, the Financial Creditors moved the NCLT against the Personal Guarantor. Therefore, the said decision will lend no assistance to determine whether the NCLT would still have jurisdiction to entertain an application under Section 95(1) against the Personal Guarantor even when no CIRP is ever initiated (whether pending or disposed of against the Principal Borrower).

19. In ***Mahendra Kumar Agarwal*** **(Supra)** the Hon'ble NCLAT at Chennai noted the decision rendered by Hon'ble Madras High Court in ***Rohit Nath I (Supra)***, as under:

"46. *The Learned Counsel for the 1st Respondent points out that in the decision of the Hon'ble Madras High Court in* ***Rohit Nath v. KEB Hana Bank Limited (2021) SCC OnLine Mad. 2734****, the* ***issue was whether `Insolvency Proceedings', against a `Personal Guarantor'****,* ***as initiated by the `Creditor', before the `Debt 'Recovery Tribunal', can be dismissed,*** *and in this regard, it was held that the `Liability' of the `Personal Guarantor' and `Corporate Debtor', are co-extensive and the `Guarantor', cannot be permitted to escape its liability solely on the premise that no proceedings were initiated against the `Corporate Debtor'. Furthermore, the point / issue, whether in the absence of `CIRP' proceedings, against the `Corporate Debtor', `Insolvency Proceedings', against the `Personal*

Guarantor', can be initiated, before the "Adjudicating Authority' / `Tribunal', was not before the `Hon'ble High Court'."

(Emphasis Added)

The Hon'ble NCLAT however stressed on 'Pendency' of a CIRP against the corporate debtor as noticed hereunder:

> ***70.*** *It cannot be gainsaid that the **<u>`pendency'</u>** of **<u>the `Corporate Insolvency Resolution Process' proceedings, against the `Corporate Debtor', is not a `condition precedent',</u>** for initiation of `Insolvency Proceedings', against the `Personal Guarantor'. <u>Therefore, it is crystalline clear that the `Insolvency Proceedings', can be initiated against the `Personal Guarantor' of a `Corporate Debtor'</u>, even if, <u>`no Insolvency Proceedings',</u> **<u>are pending</u>** <u>against the `Corporate Debtor'</u>.***"**
>
> **(Emphasis Added)**

20. Alike ***Mahendra Kumar Jajodia*** **(Supra),** ***Mahendra Kumar Agarwal*** **(Supra)** also addressed the issue of jurisdiction in the context of "pendency" of a CIRP pending against the Corporate Debtor, not one "initiated" or "disposed of" already. The Hon'ble NCLAT has succinctly held that even when no proceedings were "pending" against the Corporate Debtor, insolvency proceedings can be initiated against the Personal Guarantor before NCLT having territorial jurisdiction, which is not in conflict with ***Rohit Nath I*** **(Supra)**.

21. Whereas Hon'ble Madras High Court in ***Rohit Nath I*** **(Supra)** case has clearly propounded that where there is no Corporate Insolvency Resolution Process initiated in respect of a company meaning thereby the Principal Borrower or the Principal Debtor, Insolvency Proceeding pertaining to guarantor must necessarily be carried only to the jurisdictional Debt Recovery Tribunal (And not to any other Forum). The said view having not been reversed in appeal has attained a finality and binds us.

22. In view of the enumerations supra, that a Personal Guarantor is also an "individual", as Sections 5(22) and 179 of the Code envisages, as well as a "debtor", as Section 94 and 95 of the Code envisages, Section 179 of the Code will come into play where no CIRP against the Principal Borrower or Corporate Debtor is initiated or is pending or concluded and Section 94 and Section 95 of the Code will come into play where there is or was a CIRP against the Principal Borrower or Corporate Debtor.

23. We are of the considered opinion that in absence of a "pending" or concluded CIRP against a Principal Borrower an application under Section 95(1) to initiate Insolvency Resolution Process against a Personal Guarantor to a Corporate Debtor will not lie before the NCLT. It will lie only before the jurisdictional Debt Recovery Tribunal (DRT).

24. It is a settled position of law that DRT and NCLT proceedings proceed on different plane, therefore, NCLT will assume jurisdiction to try an insolvency and/or bankruptcy case against a personal guarantor only when a CIRP against the principal borrower has already been initiated before it and not otherwise.

25. We have noted that the Hon'ble **Single** Bench of Delhi High Court in ***Axis Trustee Services Limited v. Brij Bhushan Singal and Another*** reported in **2022 SCC OnLine Del 3634: (2022) 171 CLA 434** took a view which seems to be a different from the Hon'ble Division Bench of Madras High Court in ***Rohit Nath I*** **(Supra).** The judgment records:

> **"*25.*** *In view of the legal position elucidated above, it clear that Section 179(1), which provides the jurisdiction for the DRT with respect to insolvency matters of individuals and firms, is subject to Section 60 of the IBC. Sub-section (1) of Section 60 of the IBC provides that in relation to insolvency resolution for corporate persons, including corporate debtors and* ***personal guarantors****,* ***the Adjudicating***

> ***Authority shall be the NCLT****. Sub-section (2) of Section 60 provides that where the CIRP of a corporate debtor* ***is pending before an NCLT****,* ***an application relating to the insolvency of a personal guarantor of such corporate debtor shall be filed before the same NCLT****. Sub-section (3) of Section 60 further provides that the insolvency resolution process in respect of a personal guarantor pending in any Court or Tribunal, shall stand transferred to the adjudicating authority dealing with the insolvency resolution process of the corporate debtor.***"**
>
> **(Emphasis Added)**

26. In the said matter the contention of the plaintiff was that the proceedings against personal guarantors have to be filed in the DRT as CIR Proceedings against the corporate debtor stood concluded. Thus, it was a case of concluded CIRP against the Principal Borrower and not a case where no CIRP was ever initiated. The judgment is extracted hereunder for clarity:

> ***"26.*** *On behalf of the plaintiff, reliance has been placed on sub-section (2) of Section 60 to contend that insolvency proceedings in respect of a personal guarantor of a corporate debtor shall be filed in the NCLT only if the CIRP is pending in respect of corporate debtor before the NCLT.* ***In view of the fact that the CIRP in respect of corporate debtor, Bhushan Steel already stands concluded****, insolvency proceedings in respect of its guarantors have to be filed before the DRT and not the NCLT. The aforesaid submission overlooks the fact that sub-section (2) of Section 60, IBC starts with words 'without prejudice to sub-section (1)'. Clearly, sub-section (2) of Section 60 is supplemental to sub-section (1) of Section 60 and has to be read along with sub-section (1) of Section 60.* ***A harmonious reading of the aforesaid provisions would lead to the conclusion that sub-section (1) of Section 60 applies in respect of insolvency proceedings in respect of personal guarantors of corporate debtors irrespective of the fact whether CIRP is pending*** *against the corporate debtor. …"*

The Hon'ble High Court clarifies that:

> *"… The objective of sub-sections (2) and (3) is that where proceedings in respect of a corporate debtor have been **initiated** in one NCLT and those against a guarantor before another NCLT or another court or tribunal while the CIRP is pending in respect of the corporate debtor before a particular NCLT, the proceedings against the personal guarantor should also be before the same NCLT."*

In that light, the Hon'ble High Court held that:

> ***"29.** In view of the discussion above, I am of the view that the NCLT would be the appropriate adjudicating authority in respect of insolvency proceedings **initiated** against the defendants in their capacity as personal guarantors for the corporate debtor, Bhushan Steel**."***
>
> **(Emphasis Added)**

27. At this juncture, it would be expedient to quote the Hon'ble Apex Court in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Ors.*** reported in **MANU/SC/1661/2019**, wherein the Hon'ble Apex Court has clearly observed as under:

> "*32. Sub-section (4) of Section 60 of IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of Sub-section (2). Sub-section (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up, **when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT. …"***

The Hon'ble Apex Court expounds the object of Section 60(2) of the Code in the following words:

> *"The object of Sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor*

and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of the very same corporate debtor, so that a single Forum may deal with both. This is to ensure that the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks, before different Fora, leading to conflict of interests, situations or decisions.

*33. If the object of Sub-section (2) of Section 60 is to ensure that the insolvency resolutions of the corporate debtor and its guarantors are dealt with together, **then the question that arises is as to why there should be a reference to the powers of the DRT in Sub-section (4).** The answer to this question is to be found in Section 179 of IBC, 2016. Under Section 179(1), it is the DRT which is the Adjudicating Authority in relation to insolvency matters of **individuals** and firms. This is in contrast to Section 60(1) which names the NCLT as the Adjudicating Authority in relation to insolvency resolution and liquidation of corporate persons including corporate debtors and personal guarantors. The expression "**personal guarantor**" is defined in Section 5(22) to mean an **individual who is the surety in a contract of guarantee to a corporate debtor**. Therefore the object of Sub-section (2) of Section 60 is to avoid any confusion that may arise on account of Section 179(1) and to ensure that **whenever a CIRP is initiated against a corporate debtor,** NCLT will be the Adjudicating Authority not only in respect of such corporate debtor but also in respect of the individual who stood as surety to such corporate debtor, notwithstanding the naming of the DRT Under Section 179(1) as the Adjudicating Authority for the insolvency resolution of individuals. This is also why Sub-section (2) of Section 60 uses the phrase "notwithstanding anything to the contrary contained in this Code".*

*34. **Sub-section (2) of Section 179 confers jurisdiction upon DRT to entertain and dispose** of (i) any suit or proceeding by or against the **individual debtor** (ii) any claim made by or against the individual debtor and (iii) any question of priorities or any other question whether of law or facts arising out of or in relation to insolvency and bankruptcy of the individual debtor. Clauses (a), (b) and (c) of Sub-section (2) of*

> *Section 179 are identical to Clauses (a), (b) and (c) of Sub-section (5) of Section 60. Therefore the only reason why Sub-section (4) is incorporated in Section 60 is to ensure that NCLT will exercise jurisdiction - (1) not only to entertain and dispose of matters referred to in Clauses (a), (b) and (c) of Sub-section (5) of Section 60 in* ***relation to the corporate debtor,*** *(2) but also to entertain and dispose of the matters specified in Clauses (a), (b) and (c) of Sub-section (2) of Section 179,* ***whenever the contingency stated in Section 60(2) arises."***
>
> **(Emphasis Added)**

28. Further, we would note that the decision rendered by the Hon'ble NCLAT in ***Shapoorji Pallonji Finance Pvt. Ltd. v. Rekha Singh*** in **Company Appeal (AT) (Insolvency) No. 397 of 2022, 398 of 2022 and 399 of 2022**, judgment dated **18.01.2023**, the Hon'ble NCLAT at para 4 has framed the question to answer as under:

> "*4. Question which needs to be answered in these Appeals is as to whether the applications filed by the Appellant under Section 95 of the I&B Code against the Personal Guarantors – Respondents was maintainable or not maintainable.*"

The Hon'ble NCLAT at paras 29 and 30 has clearly held that:

> *"29. In view of the foregoing discussion, we are of the view that submission of learned counsel for the Respondent that since the asset size of JFIL became less than Rs.500 Crore as on 31.03.2021, the Adjudicating Authority shall lose jurisdiction to proceed further and this Tribunal shall also have no jurisdiction to proceed in the matter, cannot be accepted.* ***We are of the view that jurisdiction will be there with the Adjudicating Authority****, as per Notification dated 18.11.2019,* ***which has to exercise on the date when application can be filed against the Financial Service Provider for insolvency.*** *As a corollary,* ***an application under section 95 can be filed against the Personal Guarantor only when on the same date insolvency can be commenced against the Financial Service Provider****.*

> *30. The objection of the Respondent that application filed by the Financial Creditor under Section 95 is not maintainable since **no insolvency proceedings** are **pending** against the Principal Borrower has already been overruled by the Adjudicating Authority. The issue is fully covered by judgment of this Tribunal in "Company Appeal (AT) (Ins.) No. 60 of 2022, **State Bank of India vs. Mahendra Kumar Jajodia, decided on 27.01.2022**", where interpreting Section 60(2) of the Code following was laid down in Paras 8, 9, 10 and 11:"*
>
> **(Emphasis Added)**

29. Thus, in view of the ratio laid down in ***Embassy Property*** **(Supra)** by the Hon'ble Apex Court and in ***Shapoorji Pallonji*** **(Supra)** by the Hon'ble NCLAT, it is clear that the jurisdiction of NCLT to consider an application under Section 95 of the Code against a personal guarantor to a corporate debtor starts when a CIRP is initiated against such corporate debtor.

CONCLUSIONS:

30 In view of the legal position enumerated above as it emanates from in the decisions rendered by the Hon'ble Chief Justice's Division Bench of Madras High Court in ***Rohit Nath I (Supra)*** and the Hon'ble Apex Court in ***Embassy Property (Supra)***, we can safely conclude that:

a. In terms of Section 60 (1) and (2) read with Section 179 of the I&B Code, NCLT is the only Adjudicating Authority in respect of Personal Guarantors to a Corporate Debtor **where a corporate insolvency resolution process or liquidation proceeding initiated against a corporate debtor is either pending before a National Company Law Tribunal or is already concluded.**

b. In absence of an "initiated" or "pending" or "concluded" CIRP against a Principal Borrower, an application under Section 95(1) to initiate Insolvency Resolution Process against a Personal Guarantor to a Corporate Debtor will not be maintainable before the NCLT. Appropriate Proceedings will lie only before the Debt Recovery Tribunal (DRT) having territorial jurisdiction.

31. In view of above, having noted that no CIRP was ever initiated against the Principal Borrower in respect of the respondent Personal Guarantor, before this Adjudicating Authority or any other Bench, we are of the considered opinion that this application preferred under Section 95 of the IBC is not maintainable before the NCLT. Accordingly, the same is **dismissed**. Liberty is however be given to take a recourse of other legal remedies as would be advised.

32. Accordingly, **C.P. (IB) No. 285/KB/2024** is **dismissed** and **I.A. (IB) No. 1988/KB/2024** is **disposed of.**

33. The Registry of this Adjudicating Authority shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), to whom the companies are registered with by all available means for updating the Master Data of the Corporate Debtor.

34. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

D.Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on this 8th day of January , 2025

PJ